No. 95-807

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ROBERT JONES,

Petitioner,

v.

BALTIMORE CITY POLICE DEPARTMENT, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

REPLY BRIEF OF PETITIONER

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TABLE OF CITATIONS

Cleveland Board of Education v. Loudermill,
470 U.S. 532 (1985) 1

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ARGUMENT

The Petitioner wishes to clarify three significant misstatements in the Respondent's Brief in Opposition to Petition for Writ of Certiorari.

First, the Respondent argues that the decision below did not rest on federal law. While this is technically true, the argument is somewhat circular. The argument presented by the Petitioner on the back pay issue was clearly based on federal law, in particular the due process provisions of the fourteenth amendment to the United States Constitution. As noted on page 22 of the Petitioner's original Petition for Writ of Certiorari, paragraphs 11 and 12 of the Amended Complaint clearly alleged a violation of the fourteenth amendment to the Constitution of the United States. In fact, the Respondent cites these paragraphs in full on page 6 of its Brief in Opposition. Additionally, the Petitioner provided an extensive memorandum filed contemporaneously with the original complaint which discussed Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), as well as the due process clause in general.

The Respondent's argument is that, because the appellate court erroneously stated that no constitutional issue had been raised, that this case therefore does not involve constitutional issues. In fact, the case not only involves constitutional issues, but in large part rests directly on a constitutional argument. This fact cannot be changed by the appellate court's erroneous conclusion that the issue had not been raised. To do so would allow a state appellate court to completely eviscerate the provisions of Supreme Court Rule 10(c) by arbitrarily and erroneously stating that no federal claim had been raised, when in fact it had. As discussed completely in the Petitioner's original Petition, there is a significant conflict on this issue. See Petition for Writ of Certiorari at 10-11.

The Petitioner also disagrees with the Respondent's characterization of the appellate court's decision, as explained

on page 8 of the Respondent's Brief in Opposition. The Respondent argues that the Court of Special Appeals found that it was unreasonable to suggest that Jones should be entitled to back pay by virtue of his receiving a probation before judgment. This is simply not suggested by the Court of Special Appeals. Rather, the Court of Special Appeals, as referenced supra, simply avoided this issue in its entirety by erroneously asserting that it had not been raised below.

Finally, the Petitioner disagrees with the Respondent in Part B in its argument, where it essentially parrots the erroneous statements of the appellate court, alleging that Jones did not challenge the adequacy of the suspension hearing. As noted on page 21 of the Petition for Writ of Certiorari, Jones had alleged in both his Complaint and Memorandum filed contemporaneously with the Complaint that he was challenging "issues of back pay not only from the Court of Appeals decision to the present, but also from his suspension to the Circuit Court's granting of a PBJ..." (emphasis added). In argument three of his lower court Memorandum, Jones specifically addressed the legality of the emergency suspension without pay. The Respondent simply latches on to the appellate court's inexplicable conclusion that Jones had not raised issues (which he had in fact clearly raised and argued with citation to authority), therefore allowing the appellate court to improperly avoid important federal issues involved in this case.

CONCLUSION

For the foregoing reasons the Petitioner requests that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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